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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/053,209      | 01/16/2002  | Daniel M. Humes      | YAK 345             | 5505             |

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KOLISCH HARTWELL, P.C.  
520 S.W. YAMHILL STREET  
SUITE 200  
PORTLAND, OR 97204

EXAMINER

BREVARD, MAERENA W

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3727

DATE MAILED: 02/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/053,209

Applicant(s)

HUMES, DANIEL M.

Examiner

Maerena W. Brevard

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 January 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6-12, 14-16 and 18-21 is/are rejected.
- 7) ☒ Claim(s) 4,5,13 and 17 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4</u> . | 6) <input type="checkbox"/> Other:  |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the second support extending generally vertically from the second end portion of the expanse to the inner end portion of the base, and additional third and fourth supports must be shown or the features canceled from the claims. No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Specification***

2. The disclosure is objected to because of the following informalities: on page 7, line 17, "52" should be changed to --56--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 6, 9-11, and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 recites the limitation "the load rib" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 9 is indefinite since a second support extending generally vertically from the second end portion of the expanse to the inner end portion of the base is not disclosed in the specification.

Claims 10 and 11 are indefinite since a third and fourth support is in to disclosed in the specification.

Claim 14 recites the limitation "the contact expanse" in line 2. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-3, 8, 12, 14-16, 18, and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by Dean et al.

Dean discloses a support member (28) having a resilient contact surface for use on a vehicle rack to transport boats comprising:

- A base (38);
- A resilient expanse (60) connected to the base;
- A spring rib (64), to the same degree claimed under an upper portion of the expanse (Column 4, lines 36-42);
- The support is generally wedged shaped (Figure 2);
- The spring rib is connected to the backside of the expanse (Figure 3);
- The base, expanse, and the spring rib are comprised of nylon (Column 4, line 32);

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- Two partial chambers (61, 68);
- At least one of the chambers is substantially deformable (Column 4, lines 32-33);
- The shell has a spring rib (74, Column 4, lines 36-37) resiliently supporting an upper flexible portion of the contact expanse (Figure 4);
- At least two pairs of tower bodies (22);
- At least two crossbars (24) connecting the tower bodies;
- At least two pair of support members or attachments (28) including an expanse (60) and a rib configuration (64) supporting the expanse; and
- The spring rib resiliently supports (74) the flexible portion of the contact surface (Figure 4).

*Claim Rejections - 35 USC § 103*

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 7, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dean et al.

Dean discloses the claimed invention except for the base, the expanse, and the spring rib being a single integral unit. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the support member of Dean a one piece unit, since it has been held that forming in one piece an article which has formerly been formed in two pieces

and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893).

*Allowable Subject Matter*

8. Claims 4, 5, 13, and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. The following is a statement of reasons for the indication of allowable subject matter:  
Dean does not teach the contact surface or the expanse having a lower stiffened portion supported by a load rib.

*Conclusion*

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Chasan, Lee, and Lee are cited for support members.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maerena W. Brevard whose telephone number is 703/305-0037. The examiner can normally be reached on M-Th; 8:00 AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703/308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are 703/872-9302 for regular communications and 703/872-9303 for After Final communications.


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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703/305-0037.

*Maerena*  
Maerena Brevard  
February 8, 2003



**Stephen K. Cronin**  
Primary Examiner